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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/654,212	09/01/00	CABOT A	AC-001

EXAMINER

QM12/1227

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ZEPHYR COVE NV 89448

ESHETE, Z

ART UNIT	PAPER NUMBER
3711	2

DATE MAILED:
12/27/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/654,212	CABOT, ANTHONY N.	
	Examiner	Art Unit	
	Zelalem Eshete	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) *8-20* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claims *1-20* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)
16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *1* .
18) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
19) ☐ Notice of Informal Patent Application (PTO-152)
20) ☐ Other: .

DETAILED ACTION

FIRST ACTION ON THE MERITS

Restriction/Election

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

   I. Claims 1 – 7, drawn to a method of playing a card game, classified in class 273, subclass 292.

   II. Claims 8 – 20, drawn to an apparatus for playing a card game, classified in class 463, subclass 13.

The inventions are distinct, each from the other because of the following reasons:

Inventions of method of playing a card game and an apparatus for playing a card game are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by hand, i.e. done manually.

Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group I, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Victor Gallo on December 6, 2000 a provisional election was made with traverse to prosecute the invention of Group I, claims 1 – 7. Applicant in replying to this Office action must make affirmation of this

election. Claims 8 – 20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4 – 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 4 and 6 recites the limitation "payline" in line 19 on page 19 and in line 8 on page 20. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moody (1998).

Moody discloses a method for playing a poker game that include dealing 5 by 5 array of cards (see column 9, lines 18 to 20). Moody teaches that the player can select

none, some or all cards, replace unselected cards and determining poker hand rankings (see column 13 and column 9, lines 20 to 23).

Moody lacks specifying that all the five rows should be dealt face up.

However, Moody discloses that in Version #2I game play all the fifteen cards are dealt face up (see column 9, lines 55 to 68).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to also extend the provision of "face up" display of the three rows (3X5) game to the five rows (5X5) game for a more challenging game play.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moody (1998) in view of Gibson.

Moody discloses a poker game of a (3X5) card layout. It lacks the use of 3 sets of cards for each of the three rows.

Gibson discloses a three-card poker.

It is common knowledge in the game of poker at the time the invention was made to use three cards in playing poker.

Therefore, it would have been obvious for one having ordinary skill in the art at the time the invention was made to modify Moody's play by using 3 sets of cards for each of the three rows for playing a three-card poker.

5. Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moody (2000).

Regarding claims 1 and 2, Moody discloses a method for playing a poker game that include dealing 5 by 5 array of cards (see column 9, lines 43 to 45). Moody teaches that the player can select none, some or all cards, replace unselected cards and determining poker hand rankings (see for example, column 13 line 30 to 33).

Moody lacks specifying that all the five rows should be dealt face up.

However, Moody discloses that the player has the option to play one, two or three hands at a time (see column 4, lines 18 to 23). He also teaches dealing a first hand of at least five cards all face up (see column 11, lines18).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the "face up cards" principle of the first hand to all five hands of cards for playing a more challenging game.

Regarding claim 4, Moody discloses placing a wager prior to the initial dealing of the cards (see column 11, lines 55 to 60).

Regarding claim 5, Moody discloses determining the poker hand rankings and the use of pay tables (see Tables 1 and 2).

6. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moody (1998) in view of Moody (2000).

Moody (1998) discloses five vertical column poker hand rankings for pay out in addition to the usual five rows (see column 10, lines 34 to 41).

Moody (1998) lacks the use of diagonal pay lines.

Moody (2000) teaches, in addition to the usual pay lines, diagonal lines or even W-shaped or M-shaped pay lines.

It is common knowledge to take advantage of progressive developments of an invention. Such a case is even more apparent when in fact the same inventor is working on the same invention, the game play, in an effort to make it a more interesting game play.

Therefore, it would have been obvious for one having ordinary skill in the art at the time the invention was made to use the progressive disclosures of Moody for playing a more complex poker game.

The possibilities of the more than 12 pay lines disclosed by Moody opens the door for players to extend the complexity of the game to whatever levels they choose to play. Therefore, it would have been obvious to one having skill in the art at the time the invention was made to purchase the 12 pay lines sequentially in a predetermined order for the more challenging a game is, its outcome (win or lose) becomes satisfying.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following citations are given to show the state of the art: Moody (2000 and 1999), Hachquet and Kadlic.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zelalem Eshete whose telephone number is (703) 605 1235. The examiner can normally be reached on 8:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeanette Chapman can be reached on (703) 308 1310. The primary

examiner, Steve Gerrity, can be reached on (703) 308 1279. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308 7768 for regular communications and (703) 305 3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 1148.

Z
December 15, 2000

Stephen F. Gerrity
Primary Examiner